UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Town of Lawrence	)	**Agreed Order No.**
DePere, Wisconsin	)	
	)	EPA-5-99-113(a)-WI-3
Respondent.	)	
	)	
Proceeding Pursuant to Sections 113(a)(3) and 114(a) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) and 7414(a).	)	

STATUTORY AUTHORITY

The following Order is issued pursuant to Sections 113(a)(3) and 114(a) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a)(3) and 7414(a).

The United States Environmental Protection Agency ("U.S. EPA") and the Respondent agree as follows:

STIPULATIONS

1. The Respondent, the Town of Lawrence, is a municipality located in DePere, Wisconsin. As such, Respondent is a "person" within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).

2. Respondent admits that U.S. EPA has jurisdiction to issue this Order. Respondent agrees not to contest such jurisdiction in any proceeding to enforce the provisions of this Order.

3. Respondent neither admits nor denies the specific findings contained in paragraphs 15 through 25 of this Order.

4. Respondent consents to the issuance of the Final Order hereinafter set forth.

5. If Respondent fails to comply with any provision contained in this Agreed Order, Respondent waives any rights it may possess in law or in equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate district court of the United States to compel compliance with the Agreed Order and/or to seek a penalty for noncompliance.

STATUTORY AND REGULATORY BACKGROUND

6. Section 112(b) of the Act, 42 U.S.C. § 7412(b)[1], Pub. L. No. 101-549, 104 Stat. 2399, requires the Administrator of U.S. EPA ("Administrator") to publish a list of pollutants that are determined to be hazardous and to prescribe emission standards for each pollutant. These emission standards constitute the National Emission Standards for Hazardous Air Pollutants ("NESHAP").

7. In accordance with Section 112(b) of the Act, 42 U.S.C. § 7412(b), the Administrator identified asbestos as a hazardous air pollutant and promulgated the NESHAP for asbestos, which includes regulations governing the emission, handling, and disposal of asbestos. 40 C.F.R. §§ 61.140-61.157.

8. To determine which requirements apply to the owner or operator of a demolition activity, the affected facility or part of the facility must be thoroughly inspected for the presence of asbestos prior to the commencement of the demolition. 40 C.F.R. § 61.145(a).

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[1] The statutory citations in paragraphs 6 and 7 refer to the Sections of the Act prior to enactment of the Clean Air Act Amendments of 1990. All other citations refer to the Act as amended on November 15, 1990.

9. All of the requirements of 40 C.F.R. § 61.145(b) and (c) apply to a facility being demolished if the combined amount of regulated asbestos-containing material ("RACM") is at least eighty (80) linear meters (260 linear feet) on pipes; at least fifteen (15) square meters (160 square feet) on other facility components; or at least one (1) cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously. 40 C.F.R. § 61.145(a)(1).

10. Each owner or operator of a demolition activity to whom the requirements of 40 C.F.R. § 61.145 apply is required to provide the Administrator with written notice of intention to demolish. 40 C.F.R. § 61.145(b).

11. Each owner and operator of a demolition activity to whom the requirements of 40 C.F.R. § 61.145(c) apply is required to remove all RACM from a facility being demolished before any activity begins that would break up, dislodge, or similarly disturb the material. 40 C.F.R. § 61.145(c)(1).

12. Each owner and operator of a demolition activity to whom the requirements of 40 C.F.R. § 61.145(c) apply is required to adequately wet all RACM and ensure that the RACM remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150. 40 C.F.R. § 61.145(c)(6).

13. If a facility is demolished by intentional burning, each owner and operator of a demolition activity must remove all RACM including Category I and Category II nonfriable asbestos-containing

material ("ACM") in accordance with the NESHAP before burning. 40 C.F.R. § 61.145(c)(10).

14. Each owner or operator of any source covered under the provisions of 40 C.F.R. § 61.145 shall discharge no visible emissions to the outside air during the demolition operations. 40 C.F.R. § 61.150(a)(1)(ii).

FINDINGS

U.S. EPA finds as follows:

15. Respondent is and was at all times relevant to this Order the owner or operator of a building located at Sand Acres Drive and Main Street, DePere, Wisconsin ("the facility").

16. The building located at Sand Acres Drive and Main Street, DePere, Wisconsin, is and at all times relevant to this Order was a "facility" as defined at 40 C.F.R. § 61.141.

17. Respondent conducted a demolition activity at the facility on August 27, 1997. More specifically, on August 27, 1997, Fire Departments from three municipalities, including the Respondent's Fire Department, intentionally burned a building owned by the Village of Ashwaubenon as part of a combined fire training exercise. Prior to burning the building, neither the U.S. EPA nor the Wisconsin Department of Natural Resources was notified of the proposed burning. Laboratory analysis of samples taken from pipe insulation and slate siding found at the facility on September 2, 1997, demonstrated that the samples contained more than one-percent asbestos. Therefore, the pipe insulation and slate siding constituted regulated asbestos-

containing material ("RACM") within the meaning of 40 C.F.R. § 61.141.

18. The combined amount of RACM at the facility that was demolished was at least 80 linear meters (260 linear feet) of pipe insulation, 15 square meters (160 square feet) on other facility components, or 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

19. At all times relevant to this Order, Respondent was an "owner or operator of a demolition activity" (as defined at 40 C.F.R. § 61.141) to whom the requirements of 40 C.F.R. § 61.145(b) and (c) applied. 40 C.F.R. § 61.145(a)(1).

20. Prior to the commencement of the August 27, 1997 demolition by intentional burning, the Respondent failed to thoroughly inspect the facility for the presence of asbestos, as required under 40 C.F.R. § 61.145(a). Respondent's failure to thoroughly inspect the facility for asbestos prior to the demolition constitutes a violation of 40 C.F.R. § 61.145(a) and Section 112 of the Act, 42 U.S.C. § 7412.

21. As the owner or operator of a demolition activity to which the requirements of 40 C.F.R. § 61.145(b) applied, Respondent was required under 40 C.F.R. § 61.145(b) to provide U.S. EPA with written notice of its intention to demolish at least ten (10) working days before asbestos stripping or removal work or any other activity began. Respondent failed to give such written notice of its intention to demolish. Respondent's failure to give such notice

constitutes a violation of 40 C.F.R. § 61.145(b) and Section 112 of the Act, 42 U.S.C. § 7412.

22. As the owner or operator of a demolition activity to which the requirements of 40 C.F.R. § 61.145(c) applied, Respondent was required under 40 C.F.R. § 145(c)(1) to remove all RACM from the facility being demolished before any activity began that would break up, dislodge, or similarly disturb the material. Respondent failed to comply with the requirements of 40 C.F.R. § 145(c)(1) and none of the exceptions found at 40 C.F.R. § 145(c)(1)(i)-(iii) apply. Respondent's failure constitutes a violation of 40 C.F.R. § 61.145(c)(1), and Section 112 of the Act, 42 U.S.C. § 7412.

23. As the owner or operator of a demolition activity to which the requirements of 40 C.F.R. § 61.145(c) applied, Respondent was required under 40 C.F.R. § 145(c)(6) to adequately wet all RACM and ensure that the RACM remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150. Respondent failed to adequately wet the RACM and ensure that the RACM remained wet until collected and contained or treated in preparation for disposal. Respondent's failure constitutes a violation of 40 C.F.R. § 61.145(c)(6) and Section 112 of the Act, 42 U.S.C. § 7412.

24. As the owner and operator of a demolition activity to which the requirements of 40 C.F.R. § 61.145(c) applied, Respondent was required under 40 C.F.R. § 145(c)(10) to remove all RACM including Category I and Category II nonfriable asbestos-containing material ("ACM") in accordance with the NESHAP before demolishing the facility

by intentional burning. The Respondent failed to remove all RACM in accordance with the NESHAP before demolishing the facility by intentional burning. Respondent's failure constitutes a violation of 40 C.F.R. § 61.150(c)(10) and Section 112 of the Act, 42 U.S.C. § 7412.

25. As the owner and operator of a source covered under the provisions of 40 C.F.R. § 61.145, the Respondent was required under 40 C.F.R. § 61.150(a)(1)(ii) to discharge no visible emissions to the outside air during the demolition operations. The Respondent discharged visible emissions to the outside air during the demolition operations. Respondent's failure constitutes a violation of 40 C.F.R. § 61.150(a)(1)(ii) and Section 112 of the Act, 42 U.S.C. § 7412.

ORDER

After a thorough investigation of all relevant facts, including the seriousness of the violations and the efforts made by the Town of Lawrence to comply with applicable regulations, U.S. EPA has determined that the compliance measures set forth herein are agreed and ordered and are reasonable.

THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

26. The Town of Lawrence, shall hereafter comply with Section 112 of the Act, 42 U.S.C. § 7412, and with all the requirements of the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M, and as it may be amended or recodified hereafter, including but not limited to the following:

a. With respect to any "facility" or part of a "facility" (as that term is defined in 40 C.F.R. § 61.141) that the Town of Lawrence intends to demolish by intentional burning, the Town of Lawrence shall thoroughly inspect the facility or part of the facility for the presence of asbestos or asbestos-containing material prior to the commencement of the demolition, as required by 40 C.F.R. § 61.145(a).

b. With respect to any "facility" or part of a "facility" (as that term is defined in 40 C.F.R. § 61.141) that the Town of Lawrence intends to demolish by intentional burning, the Town of Lawrence shall submit to the State and to the U.S. EPA, in a timely manner, notices of intent to demolish in compliance with the requirements of 40 C.F.R. § 61.145(a) and (b).

1. Notices required by subparagraph 26.b. shall be sent to both the State and U.S. EPA until this Order expires in accordance with paragraph 38. After the expiration of this Order, Respondent will only be required to notify the State.

2. Notices required to be sent to U.S. EPA shall be sent to:

Joseph Cardile
Air Enforcement and Compliance Assurance Branch
Mail Code (AE-17J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

c. With respect to any "facility" or part of a "facility" (as that term is defined in 40 C.F.R. § 61.141) that the Town of Lawrence intends to demolish by intentional burning, the Town of Lawrence shall remove all RACM before any activity begins that would break up, dislodge, or similarly disturb the material, as required by 40 C.F.R. § 61.145(c)(1) and 40 C.F.R. § 61.145(c)(10).

d. With respect to any "facility" or part of a "facility" (as that term is defined in 40 C.F.R. § 61.141) that the Town of Lawrence intends to demolish by intentional burning, the Town of Lawrence shall adequately wet all RACM and ensure that the RACM remains wet until collected and contained or treated in preparation for disposal, as required by 40 C.F.R. § 61.145(c)(6) and 40 C.F.R. § 61.150(a)(1)(ii).

27. Any authorized representative of U.S. EPA or of the Wisconsin Department of Natural Resources, Bureau of Air Management (including a designated contractor) may, upon presentation of credentials, and without prior notice, enter a facility owned or operated by the Town of Lawrence, at any time a demolition or renovation operation is being conducted, to determine compliance with the requirements of the Act, the asbestos NESHAP, and the provisions of this Order, and may take such samples and photographs and inspect and copy such records as U.S. EPA may deem necessary. This paragraph is in addition to, and not in limitation of, U.S. EPA's authority to

investigate, inspect, or enter premises pursuant to any laws, permits, or regulations.

REPORTING

28. Within 30 days of the completion of any demolition operation by intentional burning in the Town of Lawrence that may take place during the life of this Order, the Town of Lawrence shall submit a Report certifying that it has complied fully with the provisions of paragraph 26 of this Order; or if the Town of Lawrence has failed to comply, it shall provide a detailed description of each failure to comply. The Town of Lawrence shall include the following information in such Report:

a. The amount of asbestos removed;

b. The name and address of the licensed abatement contractor which performed the asbestos removal; or if an abatement contractor is not used, the names and addresses of the entities and/or individuals that performed the asbestos removal, including the name and address of the person who satisfies the requirements of 40 C.F.R. § 61.145(c)(8);

c. Copies of the training credentials of the person named in paragraph 28.b. above who satisfies the requirements of 40 C.F.R. § 61.145(c)(8); and

d. Copies of waste shipment records satisfying the requirements of 40 C.F.R. § 61.150(d) and signed by the owner or operator of the designated disposal

site, as evidence of the proper disposal of the asbestos removed.

29. All submissions required by paragraph 28 of this Order shall be postmarked no later than 30 days after the completion of the demolition operation, and addressed to:

Chief, Air Enforcement and Compliance Assurance Branch
Attn: Tracker
Mail Code (AE-17J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

30. Any notice, report, or other document submitted by the Town of Lawrence, pursuant to this Order, which makes any representation concerning the Town of Lawrence's compliance or noncompliance with any requirement of this Order, shall be certified by a responsible official of the Town of Lawrence. The certification of such responsible official shall be in the following form: "I certify that the information contained in or accompanying this submission is true, accurate and complete to the best of my knowledge, information and belief."

GENERAL PROVISIONS

31. This Order constitutes final disposition of the violations described in paragraphs 20, 21, 22, 23, 24 and 25.

32. Each party shall bear its own costs and attorneys' fees with regard to the violations resolved by this Order.

33. Except as specified in paragraph 30, nothing in this Order shall be construed to relieve Respondent from its obligation to

comply with all applicable local, State and Federal laws and regulations, including applicable provisions of 40 C.F.R. Part 61.

34. Nothing in this Order shall be construed to be a waiver by the Administrator of the U.S. EPA of any rights or remedies under the Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. § 7603.

35. Nothing in this Order shall be construed to restrict in any way U.S. EPA's authority under Section 114 of the Act, 42 U.S.C. § 7414.

36. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information in an administrative enforcement action or investigation involving U.S. EPA and specific individuals or entities.

37. The provisions of this Order shall apply to and be binding upon the Town of Lawrence, its agents, servants, employees and any successor(s) in interest. The Town of Lawrence, shall give written notice of this Order to any successor(s) in interest prior to transfer of ownership, and shall verify simultaneously to the Director, Air and Radiation Division of U.S. EPA, Region 5, that such notice has been given.

38. This Order is effective on the date of signature by the Air and Radiation Division Director. The Order will expire one year from the effective date, provided that U.S. EPA determines that Respondent has complied with all the terms of the Order.

SIGNATORIES

Each undersigned representative of a party to this Agreed Order agrees that he or she is fully authorized to enter into the terms and conditions of this Agreed Order and to legally bind such party to this document.

10-12-98
Date

Jon Kleuskens, Fire Chief
Town of Lawrence

10/30/98
Date

Stephen Rothblatt, Acting Director
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency